

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IOVATE HEALTH SCIENCES
INTERNATIONAL, INC.,

Plaintiff,

v.

MEDICAL RESEARCH INSTITUTE and
EDWARD A. BYRD,

Defendants.

AND RELATED CROSS-ACTION.

Case No. C-04-1817 PJH

**ORDER OF
DISMISSAL**

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, plaintiff and counter-defendant Iovate Health Sciences International, Inc., defendant and counterclaimant Medical Research Institute and defendant Edward A. Byrd hereby stipulate that the above-captioned matter is dismissed with prejudice in its entirety pursuant to a confidential settlement agreement between the parties. Each party shall bear its own costs and attorneys' fees.

EXECUTED this 5th day of November, 2004.

STIPULATED AND AGREED:

/s/
Simon J. Frankel (171552)
HOWARD, RICE, NEMOROVSKI, CANADY
FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
(415) 434-1600


Counsel for Plaintiff and Counter-Defendant
Iovate Health Sciences International, Inc.

/s/
Angela L. Dunning (212047)
COOLEY GODWARD LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
(650) 843-5000

Counsel for Defendant and Counterclaimant
Medical Research Institute and Defendant
Edward A. Byrd

IT IS SO ORDERED:

6/13/05


The Honorable Phyllis J. Hamilton
United States District Judge

PROOF OF SERVICE

I am a citizen of the United States and a resident of the State of California. I am employed in Santa Clara County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is Cooley Godward LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, California 94306-2155. On the date set forth below I served the documents described below in the manner described below:

NOTICE OF DISMISSAL

☒ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Cooley Godward LLP for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Palo Alto, California.

on the following part(ies) in this action:

H. Joseph Escher III, Esq.
Simon J. Frankel, Esq.
Howard Rice Nemorovski Canady
Falk & Rabkin
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024

John E. Villafranco, Esq.
Thomas Gilbertsen, Esq.
Collier Shannon Scott, PLLC
3050 K. Street
N.W. Suite 400
Washington, DC 20007-5108

Executed on November 5, 2004, at Palo Alto, California.

/s/

Brandie Giovannoni